

E X T R A C T

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Legislative Council

Ref : CB2/PL/FE

LegCo Panel on Food Safety and Environmental Hygiene

Minutes of Meeting

**held on Monday, 29 October 2001 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Fred LI Wah-ming, JP (Chairman)
Hon Tommy CHEUNG Yu-yan, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, JP
Hon Andrew CHENG Kar-foo
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon WONG Sing-chi

Members Absent : Dr Hon David CHU Yu-lin, JP
Dr Hon YEUNG Sum
Hon CHOY So-yuk

Public Officers Attending : Item IV
Mrs Stella HUNG
Deputy Secretary for the Environment and Food (A)

Mr David LAU
Principal Assistant Secretary for the Environment and Food (A) 2

Mr W H CHEUK
Deputy Director (Environmental Hygiene)
Food and Environmental Hygiene Department

Ms Winnie SO
Assistant Director (Headquarters)
Food and Environmental Hygiene Department

Mrs YUEN KWONG Wai-king
Secretary, Liquor Licensing Board
Food and Environmental Hygiene Department

Item V

Mrs Stella HUNG
Deputy Secretary for the Environment and Food (A)

Ms Priscilla TO
Principal Assistant Secretary for the Environment and Food (A) 1
(Atg)

Mr David LAU
Principal Assistant Secretary for the Environment and Food (A) 2

Mr W H CHEUK
Deputy Director (Environmental Hygiene)
Food and Environmental Hygiene Department

Dr Gloria TAM
Assistant Director (Food Surveillance & Control)
Food and Environmental Hygiene Department

Ms Rhonda LO
Assistant Director (Operations) 3
Food and Environmental Hygiene Department

Dr M H JAI
Veterinary Officer (Farm Inspection)
Food and Environmental Hygiene Department

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2)5

Staff in Attendance : Miss Yvonne YU
Senior Assistant Secretary (2)7

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IV. The Liquor Licensing Board and its work

(LC Paper Nos. CB(2)167/01-02(03) and CB(2)167/01-02(05))

5. The Chairman said that at the meeting between Legislative Council (LegCo) Members and Kowloon City District Council (KCDC) members on 12 April 2001, KCDC members had raised concern about the opening of bars in residential areas, as this had caused much nuisance to the residents nearby. KCDC members had requested LegCo Members to review the existing legislation and the licensing criteria of the Liquor Licensing Board (LLB).

6. At the invitation of the Chairman, Assistant Director (Headquarters) of Food and Environmental Hygiene Department (AD(HQ)) briefed members on the Administration's paper (LC Paper No. CB(2)167/01-02(03)). She said that LLB was established as an independent statutory body under Regulation 2A of the Dutiable Commodities (Liquor) Regulations (Cap. 109, sub leg. B). The powers of LLB included issue of liquor licences and deliberation on any application, renewal, transfer and amendments to the licences. She stressed that as a general principle, LLB considered each and every application for a liquor licence on its own merits, taking into consideration the environment where the premises were located and the mode of operation. She further said that Food and Environmental Hygiene Department (FEHD) provided secretarial and executive support to LLB.

7. Mr Andrew CHENG pointed out that other districts also faced similar problems as KCDC concerning nuisances caused by the operation of bars especially in residential areas. Referring to the case cited by a KCDC member that a new liquor licence was issued for the same premises despite the termination of the former liquor licence, Mr CHENG asked whether there was any loophole in the existing legislation. He said that LLB should carefully balance the commercial interests with the need to maintain peace and order in residential areas.

8. The Chairman pointed out that according to paragraph 9(f) of the Administration's paper (LC Paper No. CB(2)167/00-01(03)), where an application was refused or a liquor licence was revoked, LLB would refuse to consider any further or other licence application in respect of the premises concerned within a period of 12 months, unless the applicant could satisfy LLB that he was not acting on behalf of the former applicant/licensee. He noted that KCDC members had suggested extending such period to 24 months and he requested the Administration to respond to the suggestion.

9. AD(HQ) said that if LLB could not find evidence that the applicant for a liquor licence was related to the former applicant/licensee, the application would have to be

Action

considered as a new application. She explained that the applicant had to satisfy LLB that he was a fit and proper person to hold a liquor licence and the premises were suitable for operation as a bar. In considering the application, LLB would have regard to the location and structure as well as the fire safety and hygienic conditions of the premises concerned. She stressed that in all the circumstances, LLB would not issue or renew a liquor licence contrary to the public interest.

10. Mr Andrew CHENG said that it appeared to him that a liquor licence would still be granted or renewed in most cases despite objections and complaints lodged against the premises. He enquired about the mechanism for the Administration or LLB to check the past records of the applicants and the considerations in processing such applications.

11. Secretary, Liquor Licensing Board (S/LLB) said that LLB was required to have regard to the "public interest" under Regulation 17(2) of the Dutiable Commodities (Liquor) Regulations, in addition to considerations such as the structural and fire safety of the premises. In assessing an application, LLB would consider whether the premises were located in a predominantly residential or commercial area, and whether the operation of the liquor premises would cause nuisance to the residents nearby. In some cases, LLB would impose additional licensing conditions such as restricting the liquor selling hours and requiring front doors which faced the streets to be closed during specific hours, in order to minimize the nuisance. In essence, LLB would adopt a fair attitude in making reasonable arrangements for both the operators and the residents in the vicinity.

12. On contested cases, S/LLB said that LLB would carefully consider all relevant factors and the reasons put forward by Government departments and affected parties. LLB would also conduct public hearings and invite the applicant and parties concerned to present their views to the Board. Normally, a short-term licence for a period of 3 or 6 months would be issued to enable further observation and monitoring of the operation of the premises, as well as to allow time for the licensee to make improvements.

13. In response to the Chairman, S/LLB said that in accordance with regulation 17(4) of the Dutiable Commodities (Liquor) Regulations, S/LLB had to give notice in writing of the Board's decision on an application, together with reasons, to the applicant and other person or body that had expressed an interest in the application. Currently the Board's decision together with detailed reasons were issued by the Secretary to parties concerned in about 10 working days.

14. The Chairman and Mr CHEUNG Man-kwong suggested that LLB should hold public hearings to hear objections. Mr CHEUNG added that LLB should also hear the views of the residents/tenants in the area concerned. He said that he had recently received complaints from schools about nuisances caused by the operation of bars nearby, for example, drunken customers might cause nuisance to pupils attending

Action

schools early in the morning. He asked whether there was a policy prohibiting the operation of bars in school areas, or restricting the opening hours of bars which were in close proximity to schools.

15. S/LLB explained that the powers of LLB were limited by the relevant legislation, and LLB was primarily concerned with the granting and renewal of liquor licences. The responsibility for enforcing the licensing conditions rest with the Police. Nevertheless, she agreed that LLB had the responsibility to ensure that the liquor premises were properly managed and should not become a gathering point for undesirable elements or a venue for criminal activities. She pointed out that under the existing legislation, LLB was not empowered to determine the number of liquor premises in a particular location, or to decide whether liquor selling premises should be allowed in school area or residential area. She said that LLB considered each and every application for liquor licence on its own merit.

16. AD(HQ) informed members that in August 2000, LLB had revoked the liquor licence granted to a bar near a school in Tsimshatsui because of nuisances caused to the pupils. She said that Hong Kong was a relatively small place where commercial and residential buildings were constructed in close proximity, and it was not easy for the LLB to balance the commercial interests with the interests of the residents in the district when deliberating liquor applications. Nevertheless, the issue or renewal of a liquor licence was based on certain objective criteria, and a liquor licence would only be issued to premises which were granted a restaurant licence or a light refreshment restaurant licence by the Director of Food and Environmental Hygiene (DFEH). Moreover, LLB might also conduct public hearings to hear objections raised by residents nearby and the relevant DC. S/LLB added that objections on grounds of noise nuisance should be supported by evidence. She pointed out that there were cases where the Environmental Protection Department found that the noise level of the premises under complaint actually did not exceed the acceptable limit.

17. Mr CHEUNG Man-kwong said that the case cited by AD(HQ) was one of the complaints lodged to him. He remarked that not many schools had the resources to co-ordinate a submission from parents to appeal to the Municipal Services Appeal Board (MSAB). He considered that the Administration should consider formulating a policy not to issue liquor licences to premises which situated very near to schools, and imposing restrictions on the liquor selling hours of premises in the adjacent areas. S/LLB advised that proximity to schools was already one of the considerations although there was no specific policy in this respect. She stressed that each application had to be considered on its own merits, and there was no hard and fast rule that could apply to all situations.

18. Mr Tommy CHEUNG declared that he had been a member of LLB since 1997. Responding to concerns raised by some members, he said that LLB consisted of nine DC members, two former Regional Council members, and one member who was conversant with town planning. He advised that while the United States adopted a

Action

policy that prohibited the selling of liquor in school areas, Hong Kong did not have such policy at present. He added that there were cases where LLB did revoke a liquor licence before its expiration on grounds that the operation of such premises had caused nuisance to the schools nearby. He assured members that LLB did review each case on its merits and took objections seriously.

19. Mr Tommy CHEUNG also raised two concerns expressed by members of the trade -

- (a) The provision requiring the liquor licensee to be an individual had posed difficulties to the trade because if the licensee resigned or disappeared, the liquor premises would immediately become unlicensed and the processing of a new application would take at least two to three weeks even under the fast-track procedures.
- (b) Hearings of appeals against non-renewal of a liquor licence normally took as long as three months and the premises could not sell liquor in the meantime.

Mr Tommy CHEUNG considered that the Administration should consider ways to shorten the time for processing such applications or appeals.

20. AD(HQ) responded that in the circumstances described in paragraph 19(a) above, the application would be processed expeditiously and the Police would be requested to conduct checks on the applicant as soon as possible. Moreover, the application form for a liquor licence would also be revised so that the applicant could also appoint a nominee and provide his particulars for police checks at the same time. She hoped that with the streamlined procedures, the time for processing such applications could be shortened to two weeks. As regards the situation described in paragraph 19(b), AD/HQ said that the Administration had to discuss with LLB the best ways to deal with such problems.

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21. In response to Mr Tommy CHEUNG, AD(HQ) said that since January 2001, there were 19 liquor-related appeal cases put before MSAB. In three of these cases, the appeals against LLB's decisions were allowed, and LLB's decisions were upheld in five cases. Regarding Mr Tommy CHEUNG's request for shortening the time for appeals, she explained that MSAB had a heavy workload as it had to deal with other licensing appeals apart from liquor licensing. However, Secretary to LLB had agreed to consider shortening the time for notifying an applicant of LLB's decision.

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22. Dr LO Wing-lok asked whether the different licensing conditions imposed on different premises would pose problems to the enforcement agencies. He asked whether Police inspections on liquor premises were carried out on a regular basis or in response to complaints.

Action

23. S/LLB advised that the licensing conditions such as restrictions on liquor selling hours or the requirement for the licensee to be on duty during certain business hours were clearly stated in the liquor licences. She said that the Police should not have difficulty in checking such conditions from the licences. She added that the frequency of inspections of liquor premises by the Police varied from district to district, and that inspections were conducted both as routine visits and in response to complaints.

24. The Chairman asked whether LLB would consider formulating objective standards or criteria for granting/renewing liquor licences for premises located in residential and school areas. S/LLB reiterated that LLB had to consider each application on its own merits. She said that LLB had previously attempted to devise standard requirements on the liquor premises in the "Soho" area in the Central. However, many operators in the "Soho" area had raised objection against such requirements and queried why these requirements were not applied to other liquor premises. She added that one of the liquor premises had not only lodged an appeal with MSAB but also applied for a judicial review and won the case. She said that a broad-brush approach in determining applications for liquor licences might lead to criticisms.

25. Mr Michael MAK noted from the Administration's paper that under the Dutiable Commodities (Liquor) Regulations, if 20 or more persons residing within a radius of 400 metres from the premises were not satisfied with LLB's decision, they could appeal to MSAB within 28 days after the date of the notice of the decision. He asked whether complaints and objections lodged after the approval of a liquor licence would still have any effect on the licence. AD/HQ said that if complaints were received against a liquor-selling establishment after the issue of a liquor licence and before the licence expired, the Police would investigate. If the complaint was justified, LLB could revoke or suspend the liquor licence of the subject premises. The case of the premises close to a school in Tsimshatsui was a case in point.

26. Dr LO Wing-lok reiterated that the Administration should review the whole liquor licensing mechanism and devise a policy setting out objective standards for the granting and renewal of liquor licences. The Administration noted the comment.

27. The Chairman sought clarification on whether food stalls providing seating-out accommodation inside public housing estates were prohibited from being granted a liquor licence. He said that such stalls were still selling liquor within a licence. Mr James TO was of the view that such a policy, if it really existed, would be overruled if the operator sought a judicial review.

28. AD(HQ) said that a liquor licence would normally be granted to premises which had already been issued a restaurant or light refreshment licence. She agreed to provide information on the policy on food stalls situated in public housing estates

Action

after the meeting.

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Legislative Council Secretariat

14 December 2001